IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17/12/2002

CORAM

THE HON'BLE MR. JUSTICE R. JAYASIMHA BABU
AND
THE HON'BLE MRS. JUSTICE PRABHA SRIDEVAN

L.P.A.No.75 of 1998
and
C.M.P.No.15331 of 1999

Inspector/Fit Person
H.R. & C.E., Arulmighu Sundaresa Gnaniar Koil
Cholakadai Street
Dharapuram ... Appellant.

-Vs-

1. Amirthammal

2. Deputy Commissioner
H.R.& C.E. Coimbatore

3. Asst. Commissioner
H.R. & C.E. Erode

4. M. Sundaram Chettiar ... Respondents

Prayer : Letters Patent Appeal against the Decree and Judgment passed by this Honourable High Court in A.S.No.594 of 1992 dated 28-10-199 7confirming the judgment and decree made in O.S.No.54 of 1989 dated 2 9-04-1992 on the file of the Sub-Court, Dharapuram.

!For petitioner :: Mr. T.L. Rammohan, Senior Counsel
for Mr. K. Jayaraman for appellant

^For respondents:: For R1 :: Mr. W.C. Thiruvengadam
for Mr. D. Krishna Kumar
For RR2&3:: Mr. M.C. Swamy, Spl. Govt.Pleader
For R4 :: Mr. N. Kanchinathan

:JUDGMENT

PRABHA SRIDEVAN,J.

The appellant was appointed as a fit person of the suit property by the authorities under the Hindu Religious and Endowments Act (H.R.

& C.E. Act)-respondents 2 and 3, according to whom, it was a public temple. Thereupon the first respondent filed the suit against the respondents 2 and 3 and the appellant for a declaration that the suit properties are private and family properties and not a public temple and for permanent injunction restraining the defendants from interference. . In the plaint the suit property was referred to as ' Sundareswarar Swami Samadhi'. The question of maintainability of the suit was raised by the defendant in view of Section 108 of the H.R. & C.E. Act. The Trial Court decided this issue in favour of the first respondent. The learned Single Judge also held that since the suit property is a 'samadhi' ,the suit was maintainable.

2. The learned Senior Counsel appearing for the appellant made his submissions with regard to the maintainability of the suit as well as on merits and referred to,
(a) The Mahalakshmi Temple V. The Commissioner, H.R. & C.E. (1993 I MLJ 266)
(b) Sri Venkataramanaswamy Deity V. Vadugammal (1974 I MLJ 431)
He also relied on State of Madras Vs. Kunnakudi Melamatam alias Annathana Matam (1966 II MLJ 13 (SC)) and Sri vedagiri Lakshmi Narasimha Swami Vs. Induru Pattabhirami Reddi (AIR 1967 SC 781).

3. It was submitted that since the main relief sought for would depend upon whether the suit property is a public temple or not this would be a dispute to be decided by the Deputy Commissioner or the Joint Commissioner under Section 63 of the Act. It was submitted that clever wording of the prayer would not improve the position and that while it is true that the Civil Court does not lose its jurisdiction with regard to reliefs that cannot be granted by the Deputy Commissioner and for which no provision is made under the Act, where there is a specific provision for deciding this dispute the respondent ought to have availed of the statutory remedy.

4. The learned counsel for the respondent submitted that it has been held in various decisions that a 'samadhi' is not a religious institution. The learned counsel brought to our notice the Andhra Pradesh H.R. & C.E. Act, which included in its fold a 'samadhi' and a ' brindavan'. He would therefore submit that since the Tamil Nadu Act has specifically chosen not to include 'samadhis' this question could only be decided by the Civil Court.

5. On merits, it was submitted on behalf of the appellants that the documentary evidence would clearly show that the earliest documents have referred to the suit property only as 'Sundareswarar Swami Koil' and only in the plaint for the first time there is reference to a 'samadhi' and therefore, the oral and documentary evidence do not establish that the suit property is a `samadhi'. On the contrary, the learned counsel for the respondent would submit that merely because some idols have been installed in and around the 'samadhi' will not take away from the property the essential characteristics of a 'samadhi'.

6. A temple is defined in the H.R. & C.E. Act thus:

""Temple" means a place by whatever designation known used as a place of public religious worship, and dedicated to, or for the benefit of, or used as of right by, the Hindu community or of any section thereof, as a place of religious worship."

and a "religious institution" is defined as a math, temple or specific endowment.
Section 63(a) reads this:
"Subject to the rights of suit or appeal hereinafter provided, the Deputy Commissioner shall have the power to inquire into and decide the following disputes and matters:
(a) whether an institution is a religious institution;
(b) whether a trustee holds or held office as a hereditary trustee."
7. In Nagammal V. Ayyavu Thevar (1973 I MLJ 266), it was held :
"The form of relief is not the sole criterion to decide the question of maintainability of the suit. One of the main issues that arises for consideration is whether the plaintiffs and defendants 3 and 4 are hereditary trustees. For deciding that issue, express provision is made in Section 63 of the Act, and the Trial Court rightly held that the suit is barred by Section 108 of the Act."

8. And again in 1974 I MLJ 431(cited supra),it was held
"It is beyond dispute that matters which strictly fell within the scope of Section 57 will have to be taken to the Deputy Commissioner and the procedure prescribed in the Act followed.... There is ample authority for the proposition that the Civil Court can decide the suit particularly when the substantial relief is one that cannot be granted by the Deputy Commissioner even though questions that arise incidentally may be within the jurisdiction of the Deputy Commissioner under Section 57 of the Act. ...
...Thus in the special enactments, the jurisdiction of the special Tribunals under the Act is confined only to the purposes of the Acts.... A relief which cannot be granted by the Deputy Commissioner can be asked for in a Civil Court". I

9. In 1966 II MLJ 13(cited supra) the Supreme Court held thus:
"Now one of the disputes in this suit is whether the institution is a religious institution within the meaning of Act XIX of 1951. Specific provision is made in Sections 57, 61 and 62 of the Act for determination of that dispute by the Deputy Commissioner, the Commissioner and eventually by a suit instituted in a Court under Section 62. The present suit is not brought under or in conformity with Section 62 and consequently, in so far as the suit claims the relief of injunction restraining the levy of contribution and audit fees under Act XIX of 1951, it is barred by Section93 of the Act."

10. In V.L.N.S. Temple V. I. Pattabhirami (AIR 1967 SC 781), the Supreme Court held,
"Section 93 of the Act does not impose a total bar on the

maintainability of a suit in a Civil Court. It states that a suit of the nature mentioned therein can be instituted only in conformity with the provisions of the Act; that is to say, a suit or other legal proceeding in respect of matters not covered by the section can be instituted in the ordinary way. It therefore imposes certain statutory restrictions on suits or other legal proceedings relating to matters mentioned therein."
In that case, the suit was for rendition of accounts and it was held that since Chapter VII of the Act does not provide for determining or deciding that dispute, Section 93 is not a bar to such a suit. It was urged on behalf of the appellant that AIR 1967 SC 781(cited supra) was a judgment delivered by a two Judge Bench whereas the earlier one was heard and decided by the three learned Judges and therefore, the earlier one would prevail. A reading of AIR 1967 SC 781(cited supra) would show that the learned Judges have considered in detail the effect of the bar of suit in the H.R. & C.E. Act and have held that insofar as the cases where the relief cannot be granted by the authorities constituted under the Act the bar will not operate so as to prevent anyone from approaching the Civil Court. So,this judgment is in no way contrary to the earlier judgment.

11. The learned counsel for the respondent relied on the judgment of this Court in L.P.A.Nos.103 of 1994 and 266 of 1995 in which on facts it was found that the suit property was a 'samadhi' and therefore, was held to be not a religious institution as defined under Section 6(18) of the H.R. & C.E. Act. In that case, the plaintiff in the suit had in fact applied to the Deputy Commissioner under Section 63(a) of the H.R. & C.E. Act for a declaration that a suit institution is only a 'samadhi' and not a religious institution. That petition was allowed. The Department's challenge to this was unsuccessful and in the Letters Patent Appeal too, it was held that it was only a ' samadhi'. Therefore, that judgment really does not help the case of the respondent. On the contrary, it only reinforces the appellant's case that the respondent ought to have approached the authorities first.

12. In the present case though there is a reference in the plaint to the suit property being a 'samadhi' the relief asked is for a declaration that the property is not a public temple. This is a dispute that falls under Section 63(a) of the H.R. & C.E. Act. It is not an incidental question that is asked to be decided in the suit, but the only question. Therefore, this dispute ought to have been adjudicated by the authority under the Act and as pointed out by the learned Special Government Pleader, the Act also provides for a detailed enquiry.

13. The suit must therefore, be dismissed as not maintainable since the question of maintainability is answered in favour of the appellant, we are not dealing with the merits of the case. It is open to the respondents to approach the authorities for a decision in this regard who shall consider this dispute3 afresh and decide the same in accordance with law. The letters patent appeal is therefore, allowed and the suit is dismissed. No costs. The connected miscellaneous petition is closed.

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Index: Yes
Internet: Yes

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